the event of her committing another offence during the twelve months she could be punished for that offence as well as for the original offence. Furthermore it seemed to me that by resisting the temptation to repeat the offence for a period of twelve months she would increase the chances of her resisting the temptation thereafter. It was for the above reasons that I set aside the sentence and discharged the appellant subject to the condition that she commits no offence during a period of twelve months.

Sentence set aside.
Appellant discharged conditionally.

MUTHUSAMY v. SUBRAMANIAM

[O.C.J. (Winslow J.) September 30, 1965]
[Singapore — Suit No. 419 of 1952]

Contract — Requirement of being in writing — Contract in Tamil language — Variation of contract — Whether documents fulfil requirement — Breach — Damages.

Power of attorney — Attorney acting on revoked power.

The plaintiff entered into an agreement in the Tamil language with the defendant on October 10, 1949 whereby he sold the business of a mess at 40A Market Street, of which he was chief tenant, to the defendant, for the sum of $2,000 reserving an option to re-purchase it from the defendant on payment to him of $2,000 by December 31, 1951 after giving him two weeks notice of intention to exercise the option to re-purchase. The plaintiff also empowered the defendant by a power of attorney to deal with subtenants and to transfer the tenancy to his name or that of any other person.

Subsequently on September 25, 1950, the plaintiff entered into a further agreement with the defendant whereby the original agreement was varied by providing that if the plaintiff failed to pay $2,000 on December 31, 1951, he would pay this sum on demand with interest at 9%. The defendant on May 11, 1951, transferred the tenancy of the premises to his own name, despite the fact that the power of attorney had been revoked.

Held: (1) the documents in this case fulfilled the requirement that they should be in writing notwithstanding that they were written in the Tamil language and there had been a valid variation of the contract;

(2) the defendant was in breach of contract in transferring the tenancy of the premises to his own name and subsequently surrendering it to the landlord and was therefore liable in damages to the plaintiff.

Cases referred to:—

(1) *Morris v. Baron* [1918] A.C. 1.

(2) *Frith* v. *Frith* [1906] A.C. 254.

CIVIL SUIT.

N. A. Christopher for the plaintiff.

M. Loganathan for the defendant.

Winslow J.: On 10th October, 1949 the plaintiff, who was the proprietor of the business of a mess at No. 40A Market Street, Singapore, of which he was the chief tenant, sold the said business to the defendant for the sum of $2,000 reserving an option to re-purchase it from the defendant on payment to him of $2,000 by 31st December, 1951 after giving him two weeks' notice of intention to exercise the option to re-purchase. On the same day he also executed a power of attorney in the defendant's favour, empowering the latter to deal effectively with his sub-tenants, and also empowering the defendant to have the tenancy of No. 40A Market Street, Singapore transferred into the name of the defendant or of any other person. Having executed these instruments he left for India but subsequently returned in May, 1950.

On 25th September, 1950 he entered into a further arrangement with the defendant whereby the original agreement (hereinafter referred to as "the agreement") for the sale of his business was varied by providing, in effect, that if he failed to pay $2,000 on 31st December, 1951 he would pay this sum on demand with interest at nine per cent per annum from 1st January, 1952, and it appears to have been clearly understood between the parties that the principal and interest would be paid either in Singapore in Malayan currency or in India in Indian currency. This is evidenced by two documents (Exhibits P1 and P2, which will hereinafter be referred to as "the documents") signed on that date by the plaintiff and the defendant respectively.

It was contended by Mr. Christopher, counsel for the plaintiff, that this variation altered the terms of the agreement in such a way as to effect a re-transfer of the said business to the plaintiff on 1st January, 1952 on the understanding that he would, from that date, be responsible for the payment of any balance of principal remaining unpaid together with the aforesaid interest.

Counsel for the defendant, Mr. Loganathan, however, contended that little reliance should be placed on these documents and that the court should be slow to act on them on the ground that the defendant was not particularly literate in the Tamil language in which these documents were written, and secondly, on the ground that, as the documents were written in the Tamil language, they did not fulfil the requirement that they should have been in writing in the English language. I was given no authority for this somewhat novel proposition.

After considering all the evidence I have come to the conclusion that the contents of these documents were read out and explained to both parties by Veerappan s/o Adaikappan (P.W.2) who himself transcribed these documents on the instructions of both the plaintiff and the defendant and who was a witness to their execution.

There is no reason why I should reject these documents on the ground that the defendant

could not read though he could write his signature in Tamil. There was no dispute about his ability to speak and understand it and I am satisfied that he understood the nature and contents of these documents.

With regard to the complaint that the documents should have been in writing in English, I can find nothing in the authorities to support the proposition that a document, which is required to be written, should be written in the English language. If the Statute of Frauds and the Sale of Goods Act had intended that the writing referred to in section 4 should be writing in the English language, they would have made express provision to that effect. They have not done so.

Any variation of a contract required to be in writing should also be in writing (see *Chitty* on Contracts Volume I paragraph 1145), though rescission can be by parol (see *Morris* v. *Baron* [1]).

I am of the opinion that the documents in this case fulfil the requirement that they should be in writing notwithstanding the fact that they were written in the Tamil language. It would be unconscionable, if not absurd, that traders in a commercial centre like Singapore should be deprived of rights acquired under solemn engagements reduced to writing in their own native tongues in the absence of a mandatory provision that such writing should be in the English language.

With regard to the complaint that the documents were not drawn up by a solicitor, I see nothing sinister in their not having been so drawn up, as was contended on behalf of the defendant, although, perhaps, if this had been done, the case might never have come to court.

I am satisfied on the proper construction of all the documents before me and after considering them in conjunction with the oral evidence adduced, that the intention of both parties was to effect a variation of the agreement by substituting new terms as to the time, mode and place of re-payment of the principal sum of $2,000 together with an additional provision that if the principal was not paid on the date set out in the agreement, interest at nine per cent per annum would become payable with effect from 1st January, 1952.

Counsel for the defendant also submitted that there is nothing in the documents to show that the plaintiff was to get his business back. I do not agree with this submission because no one in his right senses would undertake to pay $2,000 with interest at nine per cent per annum if he knew that he was going to get nothing in return, and it must have been within the contemplation of the parties that the plaintiff would, in fact, get his business back and this was obviously the object of the entire exercise which took place on 25th September, 1950.

The defendant gave no evidence of any kind and his counsel submitted that he did not propose to call him, in all the circumstances, because the case seemed to turn largely on the question of the interpretation of documents. Be that as it may, the fact remains that there is no rebuttal of the evidence given by and on behalf of the plaintiff.

It is clear that, after the execution of the documents varying the agreement, the defendant accepted a sum of $200 at least from the plaintiff on 19th November, 1950 towards account "in respect of the pronote for rupees 3100 dated 25/9/1950 in connection with the above said (premises) No. 40A", which is evidenced by a receipt (Exhibit P3). The plaintiff also claimed that he had made two other payments totalling $450 towards account in October, 1950.

The defendant, in purported pursuance of the power of attorney granted to him on 10th October, 1949, had the tenancy of premises No. 40A Market Street transferred into his own name on 11th May, 1951 notwithstanding the fact that this power had been revoked by the plaintiff on 18th October, 1950 and notice thereof sent to him by post dated 25th October, 1950.

It was contended on his behalf that the power was irrevocable and that, therefore, he was entitled to act under the authority of that power. I was referred to a proposition at page 177 of "Powers of Attorney" by *F. Bower Alcock* which reads —

> "A power has been described as being coupled with an interest 'where an agreement is entered into on a sufficient consideration whereby an authority is given for the purpose of securing some benefit to the donee of the authority'; such powers cannot be expressly revoked or countermanded, so long as the consideration subsists".

It was accordingly contended that the power in the present case was coupled with an interest and that, therefore, it could not be revoked. While I accept the proposition cited from *Alcock*, I am not satisfied, however, that the power in the present case is, in fact, coupled with an interest. There is nothing in the power which refers to any consideration for which it was given or even to the agreement for the sale of the business and nowhere does it state that the power is to be irrevocable. The power must, therefore, be regarded as a naked power which can be expressly revoked as was done in this case (see *Frith* v. *Frith* [2]).

I do not think that I can be expected to read the power in conjunction with the agreement. Even if I am entitled to read the two together it should be noted that paragraph 3 of the agreement only empowers the defendant to effect a transfer of the tenancy into his own

name or that of any other person on the failure of the plaintiff to exercise his option by 31st December, 1951. It is clear, therefore, that in effecting the transfer of the tenancy on 11th May, 1951, he was acting outside the scope of his authority and in clear defiance of the provisions of paragraph 3 of the agreement.

With regard to damages for breach of contract I must take into consideration the fact that there has been considerable delay in bringing this action to trial on the part of the plaintiff. It was first set down for trial on 30th November, 1953 and was part-heard before Taylor J. on 26th April, 1954 when leave was granted to the plaintiff to amend his statement of claim, and to the defendant to file an amended defence. Nothing was done until 5th April, 1965 when Chua J. gave the plaintiff leave to extend the time for filing the amended statement of claim. A more extraordinary example of unexplained procrastination in prosecuting a claim is difficult to imagine.

I have, therefore, come to the conclusion that I should exclude the period subsequent to 26th April, 1954 in determining what damages the plaintiff should receive for being kept out of his business. Moreover, the plaintiff, who is an accounts clerk with a Chettiar firm, knows nothing about the catering business or the business of running a mess. He certainly is no cook. There is no guarantee that if he had taken over the business on 1st January, 1952 he would have made a success of it.

It is claimed on his behalf that a net profit of between $300 and $400 per month was being made from the business of the mess before the date of the agreement. There is no evidence before me of the nature of the profits or losses after this date. The evidence of the landlord, Panachand Amarshi Doshi (P.W.1) is to the effect that the defendant had been running his business at a loss for a considerable time and that he was heavily indebted.

I cannot see that any useful purpose would be served by my assessing the nature of the profits which might have been made by the plaintiff had he been given the business on 1st January, 1952 otherwise than in terms of a much lower sum than that claimed. There is no evidence as to how many people used the mess or how popular it was. On the one hand, I have the evidence of the plaintiff that he was making a profit of at least $300 per month before the agreement. On the other hand, I have no evidence about subsequent profits or losses except the evidence of P.W.1 which, as I said earlier, showed that the business was running at a loss. For all I know the plaintiff may well have made a worse mess of his mess business.

I must also take into account the fact that there is a balance of at least $1,350 due to the defendant with interest at nine per cent per annum from 1st January, 1952 i.e. approximately $3,000.

In all the circumstances, I assess damages for breach of contract in the round sum of $1,000.

The plaintiff's claim succeeds, therefore, with costs in the following terms:—

(1) There will be a declaration that the plaintiff was entitled to the chief tenancy of 40A Market Street, Singapore prior to its surrender by the defendant on 30th June, 1965. It follows that he is entitled to the sum of $6,000 which the defendant received from the landlord on its surrender.

(2) Damages for breach of contract in the sum of $1,000.

(3) An account of all the rents and profits received by the defendant and moneys expended by him in pursuance of the Power of Attorney dated 10th October, 1949, to be submitted to the registrar.

Claim allowed.